COMMISSIONERS PROCEEDINGS
JUNE 15, 2004
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stanton, Pridemore, and Morris, Chair, present.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

PRESENTATION- ABANDONED HORSES LOTTERY

Commissioner Morris made opening remarks.

Linda Moorhead, Department of Community Development, presented. Ms. Moorhead introduced the individuals who provided foster care for the horses.

There was a lottery drawing for the opportunity to adopt the available horses.

BID AWARD 2373

Reconvened a public hearing for Bid Award 2373 – 911 Telephone Equipment Upgrade. Mike Westerman, General Services, read a memo recommending that Bid 2373 be awarded to the sole bidder. There being no public comment, **MOVED** by Pridemore to award Bid 2373 to Qwest of Portland, Oregon in the total bid amount of $308,410.37, including Washington State sales tax, and to grant authority to the County Administrator to sign all bid-related contracts. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

BID AWARD 2367

Reconvened a public hearing for Bid Award 2367 – Annual Hot Applied Seal Coat Application. Mike Westerman, General Services, read a memo recommending that Bid 2367 be awarded to the lowest bidder. There being no public comment, **MOVED** by Stanton to award Bid 2367 to Blue Line Transportation Company of Portland, Oregon in the total bid amount of $260,186.76, including Washington State sales tax, and to grant authority to the County Administrator to sign all bid-related contracts. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Stanton to pull item 3 – Home Occupation Ordinance, for further consideration at the end of the meeting. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

There being no public comment, **MOVED** by Stanton to approve items 1 through 16, with the exception of item 3 – Home Occupation Ordinance. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

PUBLIC HEARING: BIANNUAL CODE AMENDMENTS

Held a public hearing to consider a recommendation from the Clark County Planning Commission to make minor revisions to the Clark County Code.

Mitch Kneipp, Department of Community Development, presented. Mr. Kneipp explained that for this round of biannuals there were 33 proposed changes and of the 33, one was pulled by staff because of outstanding issues that needed to be resolved. Of the remaining 32, the Planning Commission voted unanimously to forward 31 of the proposals to the board for approval. They voted not to forward one to the board and for three others they had discussions and are requesting the board to direct staff to look at other possible changes for future biannual code amendments. Kneipp asked the board how they would like to proceed with discussion.

Morris indicated that they would probably prefer that they not go through them individually.

Stanton stated that she would like to hear about the ones that the Planning Commission had discussion on.

Kneipp referred to number 27 on page 15 – Class IV, G, Single-Family Dwelling Moratorium Waiver. He said staff actually pulled this one from the recommendation. He said there were technical issues that couldn't be resolve in a timely manner, but that they hoped it would be brought back with the next round of biannual code changes. He said the one that the Planning Commission was not recommending approval of was number 19 on page 10 – The Density Transfer Provisions. Kneipp said this issue was related to parameter lots of a density transfer development where the requirement is that when they are adjacent to single-family residential zones, those lots have to be 90% of the base zone. He said the question was whether or not that included across the street; that they would still have to be that. He said there have been various interpretations in the past. He further explained. He said the Planning Commission was actually directing staff and the board to look at removing the section and staff was in agreement with that.

Morris asked what the net effect of that would be. If you are across the street, do you or do you not have to have lots that are 90%?

Kneipp said the net effect of it now was that you would not. He said if they don't change anything in the code, then across the street is not considered a joining in; they wouldn't need to do that. Kneipp then talked about number 17 on page 9 – Maximum Lot Size Exemption. He stated that what was discussed at the Planning Commission hearing was that they didn't have a notice requirement so they had to take it back and go at it with the next round. He said they agreed that that would be the place to do it.

Morris asked what the zoning district was.

Kneipp said it was R1-6.

Morris asked if that was within the 10% variance – "don't we allow 10%?"

Kneipp said they didn't for lot sizes.

Kneipp moved on to number 23 on page 13 – Legal Lot Determination, Public Interest Exception. He said this provision related to tax lots and legal lots of record that have been merged at the owner's request for taxing purposes, but possibly unknowingly and the owners could lose their legal lot status. He said there were provisions they could look at for separating those lots back out and there's some criteria, one being that if the owners didn't realize a reduction in the appraised value of $45,000 – that was the criteria they were thinking about getting rid of. The Planning Commission voted unanimously to forward it to the Board. However, since the Planning Commission hearing a case came up and staff is recommending an alternative to the provision, which is to do completely away with the section. He further explained. Kneipp moved on to the last issue – number 29, the landscape matrix on page 16. He said that as far as the proposed amendment, again the Planning Commission unanimously voted to forward it and had wanted staff to look into adding some flexibility to it. He said with the board's direction, staff would be willing to look at it for the next round of biannual code changes.

Stanton asked about the amendment to page 13.

Kneipp responded.

There being no public comment, **MOVED** by Stanton to approve staff's recommendation for the Biannual Code Amendments. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

PUBLIC HEARING: TITLE 40

Held a public hearing to consider amending Clark County Code Title 40 by adding five sections that were inadvertently omitted.

Gordy Euler, Department of Community Development, presented. Mr. Euler explained that it had been discovered that the version attached to the Title 40 ordinance adopted by the board somehow didn't include five sections. He stated that the five sections were not new language; they were part of the old Title 18, Section 65 – Impact Fees, and is language that the board has seen before. He said they need to be part of the code.

Rich Lowry, Prosecuting Attorney's Office, explained that it appears that there was a copying problem because all of the sections do appear in the table of contents at the beginning of Title 40.

Pridemore said the staff report said that the minutes of the public hearing were attached, but he didn't see them in his materials. He asked why it was a 5-1 vote.

Euler said that one of the Planning Commissioners was concerned about adequate notice of the hearing. Euler said they could show that legal notice was provided. He said it wasn't over the content at all.

Morris asked if, when they had adopted the last ordinance, they had struck the language in Title 18.

Lowry said they did.

Morris asked how they've been collecting fees.

Lowry said that fortunately those particular sections don't deal with the assessments of the fees; they deal with the administration of the fund.

There being no public comment, **MOVED** by Pridemore to approve Ordinance 2004-06-09. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

PUBLIC MEETING: TAYLOR PLACE SUBDIVISION

Held a public meeting to consider an appeal of the Clark County Land Use Hearing Examiner's decision in the matter of a Type III application for a zone change from R1-10 to R1-6 and preliminary plat approval of a 10-lot residential subdivision on approximately 1.92 acres.

The board certified reading the pertinent parts of the record.

Morris explained that the issue had to do with whether or not in a subdivision that accesses a private road is the minimum lot size for the lots – in order to meet the minimum square footage for the lot size, may the applicant include the part of the lot that goes to the center line of the road. She said it is an area in which all of the argument is legal. There is nothing technical and there are no disputed facts; however, there are disputes over interpretations of the law and how it's applied to the facts.

Pridemore referenced staff's argument regarding Exhibit 20, which clearly states the definitions for lot area, front lot line, etc. He said that clearly what is spoken to in the code would admonish that obviously there were a relatively few number of applications in the past where this was not uniformly applied, but that doesn't change the underlying fact that the code is pretty clear about what this is supposed to be.

Stanton agreed and said she could see how staff got where they got, as well as how the Hearings Examiner got to where he got. However, how do you explain away the definition of right-of-way? She that to her that was the piece that was left out in the staff discussion, as well as the Hearings Examiner discussion.

Pridemore said the definition for front lot line is – "Front lot line shall mean the property line abutting a street or approved private road or easements." He said that was clear to him.

Stanton asked if Commissioner Pridemore was saying that it would have to meet all of the tests and for him the definition of a front line would keep this from being permissible to be in the middle of a private road.

Pridemore said absolutely.

Lowry said that obviously the code has some internal inconsistencies in it. He said it's also true that there probably is no good policy reason to treat public and private roads differently for purposes of determining lot size. He said he thought Commissioner Pridemore had probably hit on the definition that most supports the Hearings Examiner's decision to affirm staff's position. He said the one section that he thought was awkward was the one that deals with rural lots -- obviously not applicable here -- and authorizes the inclusion of half a public right-of-way in computing rural lots sizes. He said the conclusion that private roads are excluded from lot area would then mean that in the rural area you could count half of a public road, but not half of a private road – very awkward results. He said the board's function, as a court's function, is to try and determine what the intent of the board that enacted this was. He said that whatever the board's decision, they should also direct staff to put it on the agenda for a code update.

Morris said that although she tried, she couldn't agree with the applicant. She further explained. She said the code conflicts and it's hard to tell which part of the code was amended at which point in time.

Lowry commented that Commissioner Morris was correct that more recent enactments are given more weight over earlier enactments, which results in a somewhat awkward fact here because Mr. Sellers is relying on the definition of right-of-way as being public. He said that definition had been under the road standards in a totally different chapter than the title, then the zoning code; however, they are now wedded with Title 40.

Morris said that Mr. Sellers also persuaded her that staff was right when he talked about the specificity of the code and that unless it's specific and clear, that then you look at the construction, but she didn't think there was anything non-specific about the definition of a front lot line. She said she thought there were several other definitions in there that were anything but non-specific that are applicable. Morris said she understood concern about the curious circumstances it causes for rural areas, but as far as she was concerned the board could simply express [tape goes blank]…it's legislative intent that given the decision they are making today, they still intend for private roads, as well as public roads, to be included in that calculation of lot size in rural areas. She said they were looking at very tiny maps for the other subdivisions that were submitted as evidence during the public hearing and she said it looked as though those lots were big enough – whether you do or don't include the private road section of it. She said it looked to her that if the issue there was whether or not the lot sizes met the requirement, than it appears to her as though they do under any circumstances. So that would not have arisen.

Pridemore said he had started to come to that conclusion and then decided that if staff recognizes that it may have been inconsistently applied, he was willing to accept that.

Stanton said that one of the big differences was the cul de sac and the difference that it made to lot 4 – not just lot 4. It was a pretty substantial amount of the lot that was being included as part of the private street, as opposed to the other examples that were in there.

Morris said she thought that if you had a cul de sac, you measured from the exterior points not from the arc. She said the issue of the lot sizes was somehow or other tied to the density table. She said that Mr. Sellers references footnote #2, but the footnote says that that's for planned unit developments. She asked what the relevance was of the phrase "in planned unit developments" in that footnote compared to the rest of the table.

Alan Boguslawski, Department of Community Development, explained that staff's interpretation of the tables when applying them to standard subdivisions in the single-family zones, is that they don't do the density calculation because of the footnote. It indicates that density is to be calculated for planned unit developments and then with the addition of the new

infill ordinance, the infill ordinance took out a portion of that footnote that said – "and infill subdivisions." He said they rely on the lot area standards that are in the table and don't apply the density except for planned unit developments.

Morris asked Lowry for direction on the motion.

Lowry said he didn't think they needed to make a motion, but to indicate that the board would like staff in the interim to continue to allow half of the private road in the rural area and to do a conforming amendment.

MOVED by Pridemore to deny the appeal and uphold the Hearings Examiner in the matter of Taylor Place Subdivision. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 106)

The Board of County Commissioners' adjourned and convened as the Board of Health.

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Pridemore to approve consent agenda items 1 and 2. Board Members Morris, Stanton, and Pridemore voted aye. Motion carried. (See tape 106)

The Board of Health reconvened as the Board of County Commissioners.

DISCUSSION ON CONSENT AGENDA ITEM #3 – HOME OCCUPATION ORDINANCE

[Please note: this was typed verbatim with the exception of any "uh, um" type terms and when the same word is repeated several times as in a false start sentence.]

MORRIS: We have had a number of hearings on proposed changes in the home occupation ordinance. We've had a number of hearings. At the last hearing, the board reached agreement on a number of the issues and most of those, as a matter of fact, are today as they were two weeks ago. Commissioner Stanton had asked staff, before we took the final vote, if they would

present to her what might be the worst possible scenario from adopting the ordinance as we had left it on Friday. During the process of doing that analysis, staff identified a few other issues that have arisen. None of those issues are new; they are all things that at one point or another have been discussed. Mr. Lowry did his usual spectacular legal analysis and found a couple of things he thought we needed to deal with for technical issues. The code that we have in front of us today, however, remains substantially the same as it was in the past and just so we can clarify for any business that was in business on or before January 1, 2001, like the Matson's, you are completely grandfathered. You do need to come in and get the Type I permit; you need to come in and do that within -- is it a year? I'm thinking off the top of my head and I think it is a year –

STANTON: Yes.

MORRIS: – and you do need to comply with the standards for screening and dust and those other things. You do not need to bring in documentation that you have building permits for everything. You do not need to do that. Now there has been a lot of concern over whether or not somehow or another anybody ever becomes exempt from a code enforcement action and this does not exempt you from a code enforcement action, just as I am not exempted in my house from a code enforcement action, or anyone who may even have a proven building permit, but they are in violation of a code, may not also have a code enforcement action against them. So, there is no way to exempt everybody out from under code violations of those natures, but that is not tied to the home business. If you were just living in your house and your house had code violations or something like that, or you were storing your own private equipment in a building that was in violation of county code, you could be subject to code enforcement. So that's not an issue that is tied to this home occupation permit. So that, I think, is totally and completely unchanged in this version of the code so everything that you thought it was when you left the last time, is still as you thought it was. So I think, Gordy, probably the best way for us to proceed is for you to articulate what are the variations in the version we have in front of us

compared to the version that we had reached major consensus on, for the most part, two weeks ago.

PRIDEMORE: Can I ask first -- I don't think I have a current markup version. I don't know if it came on –

STANTON: Is number 3 in your book not the current?

PRIDEMORE: Number 3 in my book?

STANTON: In the Consent Agenda book. It was in the consent.

MORRIS: I also asked Louise to get me another copy as well.

EULER: The current version says – "Draft for Commissioners Consideration" and has today's date on it.

PRIDEMORE: Okay, I do have it. I'm sorry. Thank you.

MORRIS: Okay, Gordy, you're up.

EULER: Okay, where to begin…again, for the record, I'm Gordy Euler, Clark County Long-Range Planning. The current version of the ordinance is back on the table and changes that we have made -- essentially there are two sets of changes in here. If they were changes made in response to the initial public hearing of May 24, those changes are underlined. If they are changes made since your deliberations on the 2nd of June, they are both underlined and shaded. So if you're looking at the ordinance you can see what's changed since the original public hearing draft that was put out -- I think the staff report was dated May 12. We have added a

provision in the Purpose Section, which has been renamed "General Section" and we've added the language that we find in the current code that says – "A home business is secondary to the use of the dwelling for living purposes and maintenance of the residential character is a general statement of the intent of this ordinance." We've also added a provision about the nature of the permit, which is on A-2, and we say home business permits are specific to the property, personal to the original applicant and are not transferable. Mr. Lowry has some additional discussion of that when we get to some other changes. Throughout the document instead of putting in the effective date of the ordinance, which was in parentheses and italics, you'll see June 15, 2004, which coincidentally is today's date. We've taken out a couple of sections in the exemptions. The way we read those, there were some problems with that language. We've created a new 3 under Applicability and Exemptions, which basically says – "In the district that your property is located, if there's a listed use for the kind of home business that you want to do, you can't have it as a home business in that district." That's what item number 3 says. So if you're in a residential district and kennels are listed as a use in residential, but they're conditional, then you can't have a kennel as a home business. That's essentially what we mean by this new number 3.

MORRIS: Okay. Just a question: the new number 3 also takes care of what we have stricken in D and E – is that correct?

EULER: That's correct. That was the intent. For those of you following along, that's B-3 on the first page. Sorry. Over on page 2, definition number 4 – Home Business Activity Area, we have now made reference later in the document to an activity area in the urban area, so we've stricken the term "rural" out of the definition; that's why you see the word stricken there. Page 3, number D-5 – Prohibited Uses, it was asked that we add "automotive recyclable materials facilities." That's also known as junkyard. We changed the definition as a result of Title 40 – I'm not sure why; I think it was easier to say junkyard – and at board direction for discussion "in urban areas new facilities for servicing motor vehicles." Those are the two additions to

Prohibited Activities. In item 7 we talk about storage of heavy equipment and material is allowed outside, or it's allowed and it's stored outside, needs to be in the activity area. And, again, we've added a reference to an urban activity area, which is why the term "rural" was stricken earlier. There weren't, I don't believe, any additional changes under E – Home Businesses Exempt. Under F – Home Businesses Minor, I believe this gets it -- an inconsistency that Matt Lewis pointed out, we've upped the number of employees in a rural area from two to three. Sort of made more sense in terms of internal consistency. I don't know, Matt, whether that cured all of the problems that you pointed out, but that was why that was changed there. Again, that's under F-1, B-2. Under F-3, language that Mr. Lowry suggested – "Minor home businesses on a private road shall be reviewed to insure that safety and maintenance impacts are adequately mitigated." We added that language in three other places here that you'll see. Again, at the bottom of page 4, under Home Businesses Minor – "All structures used in home business shall be legally permitted at the time of receipt of a home business permit." Great discussion about how this should apply, and that's the language that we hit upon. Page 5, under Home Businesses Major, again we added safety and maintenance to the requirement for home businesses on a private road. Safety and maintenance impacts were adequately mitigated; same language that's on the previous page. Top of page 6, this is new language for rural home businesses that include facilities for servicing motor vehicles. There was considerable testimony taken at the public hearing about auto repair facilities. People seemed to be zeroing in on that as a particular use and so, again, under the prohibition we've put in language that says – "…and in urban areas new facilities are not allowed. If you want to have a new facility in a rural area, these would be the standards under which those would apply." Again, an activity area of no more than two percent, parcel landscaped or screened. That's consistent with the matrix. What isn't consistent is a proposed maximum accessory structure size of 1,500 square feet that deviates from the matrix – that's on the last page – and then compliance with all the building and fire and environmental code regulations. So you would need to prove your building permit.

STANTON: I meant to look up the definition of L3 standard on landscaping. Could you describe what that is -- I mean on screening, in particular?

EULER: All the planners have disappeared. It's a six foot landscaped -- is that correct? Six feet of landscaping?

UNIDENTIFIED STAFF: [Comments inaudible]

EULER: Yeah.

MORRIS: Didn't we talk about whether it's fences or arborvitae?

EULER: Yes. L4 is a fence.

STANTON: So L3 is landscaping it will screen.

EULER: Right.

MORRIS: Well, look, they have it right handy; right behind us. I didn't even know that opened.

[LAUGHTER]

MORRIS: Are those closets?

STANTON: Oh, no, no, no! [Laughs] I guess the reason I ask that is because one of the photos we saw yesterday as an example of worst case had simply a fence with slats in it. I thought we had been talking about landscaping and so I wasn't able to judge whether that was an accurate portrayal of what really could happen.

EULER: L3 standard requires enough high shrubs to form a screen six feet high that's 95% opaque year round.

PRIDEMORE: But you could, under this, go with an L4? You could still do a fence instead. I mean that wouldn't be –

EULER: This is a minimum L3. L4 requires a six-foot high wall that complies with the F2 standard.

MORRIS: That's not a fence. That's a wall.

STANTON: Where do you get to the fence with the slats in it? Would that be allowed under this? I guess is my question. Is it a higher standard or a lower standard?

EULER: Reading on here, I'm in the Title –

MORRIS: Maybe we ought to just ask Mr. Goddard, since you work with this everyday.

TRAVIS GODDARD: Actually I don't because they don't apply in the rural area. My name is Travis Goddard and I'm the Rural Team Leader from Development Services. Yes, in fact the L4 is a higher standard because it requires a structure to block the view as opposed to vegetation, which in certain circumstances doesn't keep its vegetation all year long. Say, like arborvitae do and they provide screening throughout the year, but some other potentially optional bushes wouldn't necessarily keep their leaves and be site-obscuring all year.

PRIDEMORE: But under the provisions of this, L3 is a minimum zone. If somebody wanted to put in a fence rather than arborvitae, they could. So under your request for -- if you consider a fence to be a worst case, the example was legitimate.

MORRIS: Is that right? You can put in a fence?

GODDARD: Yes.

EULER: Yes, you can. L3 goes on to say – "…a six-foot high wall or fence that complies with the F1 or F2 standard with or without berm may be substituted for shrubs, but trees and ground cover plants are still required." I'm quoting the L3 language.

MORRIS: Okay. So in other words you could put in a slatted fence plus the trees.

EULER: Correct, as I read Title 40.

MORRIS: Okay. You want to go ahead?

EULER: Sure. Sorry. Let's see, where were we? Top of page 6…again, the same language about – "new home businesses shall be legally permitted at the time of receipt of the home business permit" – that was added here also under G5 -- this is G5 now, this is New Businesses Major.

PRIDEMORE: Just to clarify on that language, Gordy, that is saying that when you come in for a home business permit, you will have to get any structures up to building codes.

EULER: That's correct. You'll have to prove that your structures are legal for the use you are proposing as a home business.

PRIDEMORE: How does that interpret for a building that was originally created for agricultural uses and now is being used for some sort of activity -- would those be required to come up to code for the current use?

EULER: The way this is worded, that's correct.

MORRIS: And, again, this is for new businesses and those businesses that in the amnesty period will have to meet these requirements if they plan to stay in business –

EULER: That's correct.

MORRIS: – and they have a time period to do that, which we haven't quite concluded yet?

EULER: That's correct.

MORRIS: Okay, great. But anybody new who goes and buys a house with a barn and decides that they want to go into widget manufacturing will have to get their barn up to –

EULER: They'll have to meet the widget code.

MORRIS: – the widget code. Great. Thank you.

PRIDEMORE: But anybody in the grandfather clause period, which is prior to 2001 –

EULER: Right. We'll get to that. We're just getting there. We'll move onto existing home businesses.

PRIDEMORE: But they would not have to get a building permit if they're already doing –

LOWRY: They would not have to get a building permit in order to get a home business permit.

PRIDEMORE: Okay.

MORRIS: Right.

EULER: Right. Looks like the most yellow ink here is under existing home businesses, so let's talk a little bit about what's there. Again, we've changed some of this language more in a procedural sense really than a standard sense. For a grandfathered home business the direction was that they would have a year to apply, which is why you see a June 15, 2005 date here -- I'm under H-2-A. We've changed the language, again, to home businesses on a private road -- the language about insuring safety and maintenance. And the requirements for rural home business to prove up and urban home business to prove up are -- rural home business has not changed; urban home businesses -- we've introduced the concept here of an urban activity area, which is an activity area. If there's outdoor storage and equipment, it would need to be landscaped and screened, again, to an L3 standard, and for an urban home business no more than 10% of the parcel is used as the activity area. That's a much greater percent than the 2% for rural, but we're talking about much smaller lots; and, again, storage of heavy equipment and material outside only within the activity area. We have the "building remains the size as it was on the date of adoption" and Mr. Lowry has some additional language to clarify what we mean by that; that's ambiguous. For businesses established after January 1, 2001, they have a year to apply and then, as this is proposed, the latest direction was three years to come into compliance; same provisions, same road maintenance agreements, Type I permit.

That's it until we get to the matrix, which is on the last page. The only major change here is we eliminated the need to aggregate parcels for size in terms of meeting the requirements of the

standards that are herein. That's pretty much a summary of what we did since the last time you've seen this. I know Mr. Lowry has some other issues that have come up that are not incorporated in here.

MORRIS: Okay. Do you want to go through these now or do you want to take Mr. Lowry's issues?

STANTON: I'd like to have Mr. Lowry do his because we had quite a long conversation yesterday and I asked him to work on a couple of things for me.

LOWRY: Sure, I have a handful of changes that aren't intended to do anything other than make this draft more clear. The first is under A-2 – Nature of Permit. That section would have all home business permits personal permits to the applicant so they could not be transferred to a successor. I have a legal concern that that would have the effect of potentially taking away nonconforming rights for new businesses. If a new business came in, complied with all current standards and then the standards were tightened up, under traditional rules of legal nonconformity that business could continue. The right to do it runs with the land, not the proprietor. So for existing businesses, I have legal concern with our ability to make those personal. For the grandfathered businesses, I don't have a problem because we're creating nonconforming rights in that section that don't otherwise exist, and I think the board has the discretion to make those permits personal to the current operator. So my suggestion is to take subsection 2 out from under subsection A, renaming subsection A "Purpose" so it goes back to the way it was, and then take subsection 2 and move it to page 6 as a subsection under subsection 1 of H. Subsection H is a section that's dealing with existing home businesses -- the ones that we're creating grandfather rights for -- and I'm suggesting that we put the permit as personal as a subsection under subsection 1.

I also am suggesting that we add a second new subsection B, which would read – "Proof of pre-existing business status must include evidence of compliance with applicable state licensing, registration, and taxing regulation." This is as a result of conversations that I've had with board members about wanting to make sure that we're in fact dealing with legitimate businesses that were historically established.

And then finally I would take the existing second sentence under subsection 1 and make it a subsection C. Not change the wording at all, just simply make it a subsection C.

MORRIS: Would you say that last one one more time.

LOWRY: I would take subsection 1, under H, after the first sentence – I would then have three subsections. The first subsection would take the language from subsection A on permits being personal, exactly as it's currently written, and put it as a subsection A. Subsection B would deal with a requirement that to establish a pre-existing business, there must be evidence of compliance with applicable state law regarding business operations. And then subsection C would simply be the existing second sentence of subsection 1.

MORRIS: Okay, thanks.

LOWRY: Still on page 6, lines 39 and 46, this is the section that requires urban and rural grandfathered businesses to remain the same size. As Gordy indicated, there's an ambiguity problem with the way it's currently written and to fix that I would recommend that those two sentences be changed to read – "The businesses, building footprints, and activity areas remain the sizes which existing on January 15, 2004."

STANTON: Oops, I lost you. Where are doing that, Rich?

LOWRY: It's subsection B-4 and C-4.

PRIDEMORE: What if their footprints are smaller than what would be allowed under the new provisions?

LOWRY: Well, one option would be that they can come in and get a new permit. Of course they may not be eligible to do that if for other reasons they don't comply, such as because of number of employees. So we could add to this language an exception allowing them to get up to what would currently be allowed for a new business.

STANTON: Yeah.

MORRIS: Can we go back just a minute to the personal -- well, we can do that…we'll come back to that. Just keep right on going.

LOWRY: Page 7 -- and I only have two more -- page 7, lines 6 and 7, currently reads – "Issuance of a permit under this subsection does not excuse violations of structural or life safety codes." The legal issue I have with that is that we can't excuse violation of any construction standard, whether it's structural or life safety. I'd recommend that that section [tape briefly goes blank] – "…issuance of a permit under this subsection does not excuse violation of applicable construction standards." Now the effect of that is since when we're issuing a grandfathered permit, we're not inquiring into whether or not building, plumbing, fire codes are met, but we're not excusing compliance either so that if, on the basis of a complaint or otherwise there's an occasion to look into whether or not we're dealing with a properly constructed building outside of the context of issuance of a home business permit, the business is going to be potentially subject to code enforcement.

The last one is on the matrix. The proposal is to delete, under footnote 1, language that allowed aggregation of contiguously owned parcels to compute lot size. It's my understanding that that's as a result of a board view that parcels shouldn't be able to be combined for that purpose because of the risk that parcels would later be sold off. My concern is that deleting the footnote doesn't accomplish a prohibition against combining parcels. We currently, as simply background law, would allow a combination –

MORRIS: Excuse me just a second. Could you speak closer to your microphone because I see people trying really hard to hear what you're saying and they're having a hard time?

LOWRY: My recommendation on footnote 1 is that we retain existing footnote 1, but add a "not" so it would read – "Parcels in contiguous ownership may not be added together for purposes of determining parcel size." The effect of that would be if a property owner wished to utilized more than one contiguously owned parcel, that owner would have to either merge those lots in some legal fashion or do a boundary line adjustment to accomplish whatever configuration he wanted. And that concludes my recommended edits.

STANTON: [Laughs] You're looking at me. And I had some additional things even that we didn't talk about yesterday. I went back and read this one more time after having read through all of the comments that we received since the last meeting, as well as actually doing a drive-by on 209th where we had so many comments from people. And looking at the photos from Code Enforcement yesterday too, that just kind of left some areas that -- I want to get this right. I really want to get this right. Because I think it can be a good thing if we do it right and I don't want any ambiguities in here. One of the issues that recently came up – and, Rich, I didn't even have a chance to talk to you about it yesterday – but there was a photo included of a home business that had a whole bunch of trucks parked out front and it was in the urban area, and it occurred to me as I went back and read through the code one last time, that when we talk about "they have to allow parking for the employees and the company vehicle," we don't ever

say that it has to be on the property. The photo that I'm remembering had all these trucks lined up and down the street around that residence and I think that would be impactful to neighbors. So I don't know whether it happens in a definition or how we can get there, but I would like to be able to say that when we talk about parking for employees and customers -- because we allow up to 10 customers a day in the urban area, and that could be a lot of people if they came at once -- where do they park?

LOWRY: Actually that is covered, but it's –

STANTON: Where's it covered?

LOWRY: – it's covered in a definition of Home Business Activity Area, and that's required to include parking.

STANTON: But we don't ever say that you're –

EULER: In minor you don't need one, but you still (inaudible) so we need to add something about being (inaudible)…

STANTON: Yeah, onsite is the terminology, I think. Gordy, you're right.

EULER: We could under Home Business Minor, which doesn't require an activity area, just that one additional parking space onsite for each non-resident employee, if that would help.

STANTON: That one picture was really pretty graphic. We don't state that the parking that you need to supply is on your site, not on the street.

LOWRY: That would involve a major or grandfathered home business, which would have to have an activity area if they're storing large vehicles and they could not be stored on the street.

STANTON: Yeah, right, I get that. My concern is more where we're allowing for the parking space for the employees who come to stay there to work, and the customers who come.

MORRIS: This was an urban –

STANTON: It was an urban application.

MORRIS: – Uh-hmm.

LOWRY: If it's a kind of use that requires a activity area, then that activity area has to be onsite, screened, and has to include employee parking, customer parking. I think what Gordy is indicating is if we're dealing with a business that's not required to have an activity, then we currently don't require parking to be onsite.

STANTON: For example, on E, 1-A-2, where we say -- this is Home Businesses Exempt -- "Maximum of two employees who come to the home business location with one parking space for each non-resident employee." I think I could make the argument that yeah, there's parking for them right out there in front of the guy across the street. It's always open. I mean 'I park my company vehicle in front of my house, but my employees can park over there because nobody else ever does.'

LOWRY: So you're suggesting that we add –

STANTON: We say something like "on the subject property" or something like that. We make it clear that we're talking about the parking is onsite.

EULER: I think that's a great suggestion.

LOWRY: And we could probably easily carry that through to minors and major.

STANTON: Right. F-1/A-3.

LOWRY: Right.

MORRIS: Well I thought that was an interesting photograph as well, but I had no idea whether it was really a home business or not because we have all of these -- do you remember complaints we have about people who park their semi-trucks? What you could have there, and you don't know for sure, but you could have just a subdivision with a cul de sac with three truck drivers who live there and they all bring their trucks home and they park them out front, and as I understand it you're not supposed to park those trucks on residential streets anyway. So the parking code would theoretically address that. But the other part that I thought was funny was they were all white. [Laughs] They were all unmarked. I wanted to know what they were carrying in them.

STANTON: I agree with you and certainly there is a neighborhood that I go to frequently that has more problems with basketball hoops in the road and more problems with motor homes and especially boats on trailers -- big boats on trailers -- that are parked on these streets. So not trying to single this is out, but in this case we're saying that you can have three employees that come to your home to work and so they're parked there all day; you have the company vehicle that you come and go in that's allowed there; and then you allow up to 12 customers to come and go -- that's a lot of folks.

MORRIS: I think she's right. Can't we just add the word "onsite?"

LOWRY: Yes.

EULER: Done.

MORRIS: Thank you. Is that alright with you, Commissioner Pridemore? [Laughs] We thought it would be okay with you.

STANTON: [Laughs] Just help us make this as good as it can be even if you vote against it, would you? I mean, shout out things that you see. The other thing that, frankly, I have quite a concern with is the transition period, or this amnesty period, that we've been talking about. In driving down 209th I had to ask myself the question, would you take a business that had been in business for 2½ years or so and allow it to just continue the way it is today for another four years? Is that the right thing or fair thing to do? I think the transition idea was the right thing to do when we were talking about moving the date clear back to January 1, 1995, in order to grandfather longer ago than that. In this case, since all of the -- and I could be wrong on the exact time that this whole conversation started, but wasn't it the beginning of 2000 this was in the paper all of the time, it was something that we -- when did the task force go to work, Gordy? I'm trying to remember. It's just so long ago. [Laughs]

EULER: The contract that we originally had with Shapiro to deal with this was something like June or July of 2001.

STANTON: 2001?

EULER: I believe so.

STANTON: So we caused the task force to –

EULER: This latest round is about three years.

STANTON: – come about because we had this issue that had been in the media and everything. And I'm desiring to leave out that you have three more years to come into compliance, making it a full four years that those businesses could continue to operate, and instead give them the one year to come into compliance as we're doing on the grandfathering, landscaping, and nuisance conditions. And, boy I sure –

MORRIS: Well before you move off of that one, I'm sure Commissioner Pridemore is going to give you the second vote on that one, but I just wanted to ask if you might be willing to stretch that out at least to two years because you are going to have a number of employees there, and those employees may or may not be able to find another job in two years. And in the particular instance that you're talking about, I thought it was another curious thing because I drove by there as well and I saw two things that troubled me. One of them was not Mr. Homola's car repair -- I mean that wasn't the primary one; it troubled me for a different reason. What troubled me more than that -- and I have no idea what it was [tape briefly cuts out]…maybe half a block, several parcels or so, there was a big piece of land with nothing in front of it and there must have been two dozen diesel trucks in various conditions of ability to move, which I've got no idea, again, whether that's a home occupation or not, but it looks to be that what we could be winding up doing here is nothing to those folks if they're not considered a home occupation. And these folks, a year for everybody to go and find a new job and close down. So I don't know what the circumstances were of that. Now quite honestly on Mr. Homola's property I saw a different issue. I mean it doesn't look to me as though visually that it's principally for a residence. It looks to me that it's principally for use of the big building in front. Just so everybody is very clear, I'm the one who said – 'When you come in, you need to be

able to show proof of residency of some kind and I'm not sure how you do that, but you need to be able to show proof of residency.' I guess what I would suggest we might do instead of that – and I have to tell you, I know you raised them, but I'm not a fan of arborvitae. They take too long to grow and their all stiff. And the one that looks to me that it's the best possible screening –

STANTON: She's going to be my marketing manager. [Laughs]

MORRIS: – [Laughs] the one I think is the best possible of screening is – we have one down the side of our house and you cannot contain the growth. I mean it's like two years and that thing was so dense you couldn't see through it and it's six feet high, and they are a greener leaf and I think the new ones come on as red, and I think they start with an 'F'. They are very leafy and you can't begin to see through those things. Do you know what I'm talking about?

STANTON: Yeah, I do.

MORRIS: What is it?

STANTON: I wish I could think of the name of it. It'll come to me. It's real common. Photinia.

EULER: Photinia.

MORRIS: That's it!

STANTON: It starts with a 'P'.

MORRIS: I guess what I would suggest is that that is added – I mean that these L3 standards in home business occupations and stuff like this for screening, that you can't just put in a fence. That you have put in that -- I mean that's cheap. It doesn't cost anything. It doesn't take any time to grow. The only problem is that you have to go out there every year and clip it because it gets so dense. I guess what I would propose to you -- because I know how strongly you feel about this, but because I see that other one down the street as so much more offensive than this one -- I guess I would like to ask for a little longer time for the folks to come into compliance or move -- because I think people are going to have to move and I think that it's pretty hard to find a job -- but that they use some sort of a better screening along there. I guess I would even, if I can persuade you to go for a second year for the sake of the people who are employed -- and there are people who are employed. I know he's going to give you a second vote on one year so you have your way.

STANTON: Nice argument.

PRIDEMORE: [first part of comments inaudible]…second vote for approving the ordinance, so what do I have to…

[Laughter]

STANTON: Well, just in guidance on this one part.

MORRIS: It's the way it's done. What else can I say? [Laughs]

STANTON: In this case, it doesn't qualify as a home business right now. It's not primarily a residence and anything I can do to tighten this up so that it says that it's -- when we're talking home businesses, it's primarily intended to be a residence. The property is residential, and secondarily there's a business that operates there. That's not the case, and I didn't look into it,

but there's probably evidence that there is not a residence there and it can't comply. I don't think it can comply under the new standards, but we're saying a year to transition out and I'm with a year.

PRIDEMORE: Well, I'm there for the year of course. I'm curious, though, you know you refer to that primarily being a residence and things and, Commissioner Morris, a couple of weeks ago when we were having this you were talking about a clear distinction in your mind between a business and a home occupation –

MORRIS: Oh, absolutely.

PRIDEMORE: – but it doesn't seem clear in here to me, what is that difference? And if there is a way – and whether it's primarily used as a residence, if that's the distinction -- if there is a way to clarify that, we may avoid some problems with it.

MORRIS: Well, actually I think that is pretty clear that the primary use is for a residence and that's why I think, because that is clear, that in this particular instance you can't determine that that is the primary use of that area.

STANTON: It's clear when we talk about it in the Purpose section -- and it's now back to being named "Purpose" -- but we can't enforce that. Rich, can we enforce it anymore if we change the definition of home business and add the word "primary" in front of residential? Does it help?

LOWRY: I don't think that really helps. Remembering that we're dealing with Type I and Type II permits, which are intended to be non-discretionary kind of actions, the standards that are in here in terms of number of employees, size of activity area, amount of the house that you can use, amount of an accessory structure that can be used, are intended to implement the purpose,

or if it was in the definition, but don't constitute -- the definitional provision doesn't constitute an independent requirement. It's function is to help in interpreting what the actual requirements of the ordinance are.

MORRIS: Well, then could you move that language into the general definition of a home business?

LOWRY: The problem I see with that is then you're turning this into a very ambiguous ordinance for staff to administer. I think if you did that so that there had to be a finding that the business was secondary, I don't know how that could be done as a Type I and probably not as a Type II.

PRIDEMORE: As I look in the Purpose section now and see things like – "…maintain residential character of the neighborhood…" it seems to me that you've already lost objectivity in how you're defining it.

LOWRY: But it's fine to lose objectivity in the Purpose statement because staff's not going to look to the Purpose except to construe the requirements of the ordinance.

PRIDEMORE: So the assumption is that the requirements within the ordinance are achieving that objective.

LOWRY: That's right.

MORRIS: Well when you get to court, clearly intent is spelled out there – "What was the intent of the legislature?" It's in that.

LOWRY: Right, but the court will go to the Purpose statement only to resolve an ambiguity in the body of the ordinance.

MORRIS: Can it be fixed then so it's not [inaudible] –

LOWRY: I don't know how it could be fixed and maintain this as a Type I and Type II application. I mean that's sort of the struggle that we've been dealing with since day one of this, wanting on the one hand to have a very abbreviated process and on the other hand wanting to achieve a very complex result.

MORRIS: Louise, would you mind letting Susan know that it's very likely I'll be late for my lunch meeting? Anybody else?

PRIDEMORE: I don't even remember what I've got.

STANTON: I've got one with Bill.

PRIDEMORE: I would like to go check.

MORRIS: Ahh, here comes Mr. Kneipp. Do you have light to shed on this?

MITCH KNEIPP: No. [Laughs]

[END OF TAPE 106; TAPE 107 BEGINS]

STANTON: Do you have some wording that we can incorporate should this one-year transition -- should it apply to the post-January 1, 2001, if I get Craig's second nod on that one?

LOWRY: I think that's just a matter of changing the dates that are –

STANTON: On page 7, is that the one?

EULER: Under 3-B. Correct. We have a June 15, 2008, which reflects the four-year –

STANTON: Which would change to five.

EULER: Six.

STANTON: 2005.

MORRIS: Yes, 2005. They have a year. If that's the way they go, they will have a year.

EULER: So to get a permit and comply within a year?

STANTON: Just like the grandfathered.

MORRIS: See I'm suggesting two years, but I'm losing this one.

EULER: Do you want a one-year and a one-year just like the grandfather's or do you want a year?

STANTON: A year.

PRIDEMORE: What did I miss? [Laughs]

STANTON: You didn't miss anything. I was asking for some language.

MORRIS: She's counting on you to vote for one year.

PRIDEMORE: I think I already gave her that.

MORRIS: Okay. Okay, well that one's clearly a 2-1 because I don't want to say to people they have only a year to find a job. He said yes to a year. There are two people up here saying, yes, they prefer a year. Could we move on?

EULER: May I just get clarification so that I understand? From the date of adoption, transition businesses have one year, not only to get a permit, but to comply with whatever standards are here?

STANTON: Right. So there isn't a temporary permit. They have a year to get a permit.

EULER: And to prove up?

STANTON: Yeah. That's how they get their permit. You can skip the temporary, right?

EULER: We'd have to amend that to take out the temporary language then.

STANTON: Right.

EULER: Okay. Just want to make sure I understood.

LOWRY: That would, I think, cause this section to get very brief – Subsection 3. Just say that – "A home business that was established after January 1, 2001 and that has been in continuous operation prior to June 15, 2004 must come into compliance."

STANTON: Unless otherwise exempt.

EULER: Unless otherwise exempt and, yes, that's about the size of it.

MORRIS: Okay, what were the other things that we needed to work through? I have one item I'd like to raise at some point in time.

STANTON: Go for it.

MORRIS: Okay. A minor home business that is on a private road, unless they can get a signed agreement, moves forward as a Type II. The difference between a Type I and a Type II permit fee is about $2,700. I am wondering if we might not – and the only reason that you have to do that is if you're on a private road and you don't have a neighbor who agrees – so what you might have under these circumstances is a neighbor [of] Mr. Polos, who doesn't like Mr. Polos, will never agree to it, and it's all of a sudden going to cost Mr. Polos $2,700 more to amend and get a permit that he's going to get anyway as long as he promises to pay his share of the damage to the road, and whatever else needs to be taken care of. So I guess I'm wondering if the board would entertain the thought of either a new type of a permit with a different kind of -- I mean we're clearly making money off of that, big time -- and I'm wondering if we might not entertain the thought of a different fee for that or call it something different: "If you can't get an agreement, you have to have arbitration." These are minor home businesses. I mean they have a fairly limited amount of traffic.

STANTON: So just in the instance where it would otherwise be a minor home business and it's on a private road –

MORRIS: Yes.

STANTON: – and I have no idea what kind of staff time we're talking about here that justifies the $2,700.

PRIDEMORE: I assume that that would involve going to the hearings examiner?

LOWRY: No.

PRIDEMORE: No, it doesn't.

LOWRY: No, on Type II –

MORRIS: Well, it does if you want to appeal it. If you want to keep appealing it, it can wind up right here and we could have that one in our lap.

PRIDEMORE: (inaudible) for the appeal.

LOWRY: Well, no, that fee I suppose is intended to reflect some additional costing terms of mailing and notice and then Type II's take more time because they're not as automatic as Type I's. In this case, the additional work would be in determining whether or not the applicant is appropriately mitigating for his impacts on the private road and in some cases for a minor that's probably not going to take very much.

PRIDEMORE: Do we have any way to estimate how much? I don't mind a smaller fee by any means, but I don't want to collect less than what it's going to cost to administer.

MORRIS: That I don't think anybody could come up with immediately.

LOWRY: One option would be to double the Type I fee and then have that looked at as we get some experience. I don't know that we're really going to know what these things cost until we start processing them.

STANTON: You're right. That sounds reasonable. That's a heck of a big difference between $2,700 and – what is it? $87? Type I is $87.

MORRIS: It's $84 and $27.61 for –

EULER: It was a big concern of the task force that we've -- and of course you've heard about fees all the time -- but the task force said that the Type II's should be more reasonable and we agree that if we want to get compliance that would be helpful.

STANTON: I think there's a difference between the Type II that we're talking about though for the major business and the Type II that we're talking about that's only driven by the fact that it's on a private road. I think that was the point that you were making.

MORRIS: Uh-hmm.

EULER: Correct.

LOWRY: I think you may want to -- if you are going to modify the fee on the minors, you may want to look at the same thing on the existing because the existing one's are all Type I's unless

they're on a private road.

PRIDEMORE: I guess I would like to suggest that within the final ordinance that it be clear that if everybody is going to be doing this in the next year, there should be ample data available to suggest a cost and that the fees for these be specifically reviewed. I can see these as being a lot more expensive to process than $84.

STANTON: Uh-hmm. So keeping track of it as we collect information in order to set a cost of service fee right now and specifically direct staff that we want to be able to re-evaluate this?

PRIDEMORE: Yes, ma'am.

LOWRY: And I think that's particularly true for the existing home businesses because there could be a lot of staff time that has to be taken up in determining whether or not, number one, the applicant historically resided on the property; and number two, whether in fact this was a continuous, legitimate business.

PRIDEMORE: And you're going to have to document the current activity level.

LOWRY: But for those after the year is over, we're not going to see anymore applications.

MORRIS: Okay, well there may actually be more legitimacy to what you're saying than for the existing one's, but for the minor one's that are coming in -- I mean I just can't…everybody will be in, they will have all paid their $2,761 because if I hear you, Commissioner Pridemore, you're suggesting that they go ahead and collect this and then figure out how much it costs. Is that right?

PRIDEMORE: I'm not suggesting that. I mean if there is some other rate, I don't mind that and I actually like the idea of having an arbitration process intervene rather than going through the whole Type II, if that's something that everybody can agree to. I don't know that we can compel someone to participate.

STANTON: So it's an alternative approach?

PRIDEMORE: Yes. And if somebody can suggest a more rationale fee for this interim period, I'm open to that.

MORRIS: Because it's mostly those minor's that I'm interested in.

PRIDEMORE: $2,700 sounds too high to me, but $84 sounds way too low. So my guess is that we're talking something in the $1,000 range, which I'm just –

MORRIS: I guess if I would have been suggesting anything, I would have suggested that we have a Type 1.5, and that a Type 1.5 was that they –

PRIDEMORE: You talk about a private road though and people will have different suggestions about the safety –

MORRIS: – well, wait. Let me finish, may I?

PRIDEMORE: Okay.

MORRIS: You just create a new type in that you have $84 plus arbitration costs and the applicant has to pay the arbitration costs, and then you don't have to get into it.

PRIDEMORE: What if the neighbors refuse to participate in an arbitration process?

MORRIS: Well, paying $1,000 isn't going to make any difference in that; or $500 isn't going to make them do anything different.

LOWRY: You'll recall that we currently have minor and major conditional use permits with a significant difference in the fee. We could do the same thing with Type II's and say that there's not a –

MORRIS: You have a Type I major and a Type II minor. [Laughs]

LOWRY: Well, I think for this purpose we'd simply have an exception in terms of the fee and say the fee for a minor home business is X dollars.

STANTON: Only we don't know what X is. It's currently $84.

MORRIS: Let's leave it this way, if we might. For the purposes of getting on, we do agree that people who are a minor home occupation, who have to come in for a Type II just because of the private road issue, deserve a lesser fee than a full Type II, and come back and give us a good logical argument that doesn't get to $2,761, because that's the fee that we charge for a lot more complicated processes. I can't remember what all is a Type II.

STANTON: So it's a Type I plus a private road agreement.

EULER: The task force wrestled with this issue -- exactly where you've landed. They wanted more than a Type I review with some public notice, but less than a Type II fee. So at the time we didn't have any other option in terms of trying to keep this consistent with what's currently available in code. This is where we landed.

STANTON: And I don't want to just arbitrarily pick a number. I'd like some kind of rationale behind it that says we will have to do this kind of public notice, here's the postage cost, here's the staff cost, here's an alternative. They can go through the mediation process.

EULER: It would be nice if we had data to say that a Type II home business fee for this type of activity was $418.03, but we don't at this point.

MORRIS: Well, you don't have that data, but you can forecast -- or at least Development Review does these kinds of things on a daily basis, so they certainly can give us an idea.

STANTON: And we're only talking about the ones where the private road is the issue?

EULER: Right, and I think the key issue for us and the task force was recognizing that the private road is the issue. How we actually addressed was -- I think this was the best they could do. Certainly some other approach, whether it's mediation or arbitration -- basically, the task force said that neighbors should be out talking to neighbors. How do we get that to happen? So, very little cost…you go out and talk to your neighbors and if that doesn't happen, you charge you more.

MORRIS: I think that's a really good idea, but what if your neighbor just doesn't want to talk with you.

EULER: Agreed.

MORRIS: My next door neighbor hasn't been out of his out in years.

STANTON: And that's the point where staff has to intervene and say, if this is the mitigation, "we agree that there are safety issues and here's how you're going to mitigate." You need to come to that point where you agree that the mitigation has occurred. What's the cost of doing that? That's really the question.

MORRIS: Okay.

PRIDEMORE: We're allowing heavy equipment on these sites, so if I've got a private road that I'm sharing with a neighbor who's suddenly running major equipment up and down it, I want my rights protected as well and so that means a full safety review, which means one of those little engineers sitting there measuring all of the corners and all of that; width issues, damage to the –

MORRIS: Actually, we're not, Commissioner Pridemore –

PRIDEMORE: – if I could finish my statement.

MORRIS: Yeah.

PRIDEMORE: – damage to the private road – those things are all my rights on that private road as well and that's what we need to protect.

MORRIS: Well, we're only talking about minor home businesses that come through on a Type I. If the Matson's come through, they are not a minor. They are a major. They come through on a Type I permit, but they're not a minor.

PRIDEMORE: Under the minor (inaudible)…

STANTON: They come through on a Type II.

MORRIS: Well, in the urban areas you cannot. Mike?

MIKE BUTTS: Mike Butts, Development Service Manager. What I can do, once you've decided how you want to do this, is sit down and figure out the scenarios of what could take place. I could figure out the estimated hours and we have a billable rate. I can come back to you and tell you each scenario of what it would probably likely cost. If you look at the urban in the major, without any private roads or anything, it is simply a checklist. It is like you can do that stuff over the counter, but you have identified it as a Type II. The issue with the private road -- the difficulty of arbitration is that we're really not a party to that so they might all agree on something, but we don't necessarily agree. But you can turn in an agreement that all the parties agree that, yeah, you can go ahead and use our road, but we find that it's a dirt road and it needs to be paved, as an example. So there's some real complications with whether they agree or don't agree and some of those are going to involve a site visit for sure and they might also involve an inspection after the fact. So let me, once you've decided what you want to do, come back with you and I will give you estimates of typical hours, the range of good or bad, and give you some estimates of what that fee would likely be in terms of actual cost.

MORRIS: That works. Thank you. Now that's one of the reasons why we ought to always have Development Review involved in task forces, as well as Long Range Planning.

STANTON: Well, I brought up my issues, that I had a concern about changing mostly the parking and that transition time and anything we could do to tighten up the understanding that the residence is the primary use of that property.

MORRIS: I think so too.

LOWRY: A thought just occurred to me. The last thing we wanted to talk about was effective date and staff's indicating that they're going to need two months to gear up to administer this stuff. Obviously, well within that timeframe somebody could be back to you with an estimated cost of the minor Type II's. So maybe if you're prepared to act on the ordinance today, you could act on it today but continue this matter to a date certain solely for the purpose of dealing with the fee issue when we can have better information for you. And then we can have that fee implemented at the same time as staff's prepared to implement the ordinance.

STANTON: So you started out talking about effective date. In here the effective date is really June 15; I mean we're talking about today. You're suggesting you won't be ready to start –

EULER: Processing permits for sixty days.

STANTON: – processing permits. So do I hear you suggesting that we ought to make the effective date where we start the clock ticking on the one year in two months?

LOWRY: You could do that or you could have the ordinance effective immediately, but permitting not available for two months. Or you could delay adoption of this, but leave the June 15 date in as the date that starts the clock.

MORRIS: I think that that's the key date for particularly distinguishing between which businesses come in clearly within the new rules, which don't, and which are transitional. So I think it's important for whatever we do that the June 15 date remain here. As I understand it, it's a technical issue for staff in getting geared up to process the permits so I guess that if you wanted -- I mean I'm trying to get the clock ticking a litter longer as I can on the one-year folks. So until you actually begin the application process you don't know what your real requirements would be or for sure what you meet or don't meet or if you're on the edge. So if you were to

start the clocking at the time the permit process opens, then that gives them the time. It locks in the June 15 date and that sounds reasonable to me.

STANTON: You don't have copies of the language that you were proposing? You just have what you –

LOWRY: Only…

STANTON: I would make a motion except I don't think I could get all the pieces in. Do you think you could go through it, Rich, and clarify what it is that you've heard us talk about today and incorporate?

LOWRY: Yes.

STANTON: If you guys are ready, I'm ready.

MORRIS: Well, I'm ready to get this behind us. I wish we could get here this afternoon and see the words themselves. That's always better for me.

LOWRY: Again, we can leave the fifteenth date –

MORRIS: Oh, I think she's talking about the whole thing, don't you? A motion for the whole thing?

LOWRY: I know, but if the board's more comfortable in seeing a new draft, we could put this over a couple of weeks and get it back to you for final adoption; probably within that timeframe have the –

MORRIS: I'd just as soon do it this afternoon.

LOWRY: We can bring it back this afternoon in final –

STANTON: Can you? At two o'clock.

LOWRY: Sure.

MORRIS: I mean it's a word processing issue and you do have to double-check each other's work, but it's a word processing issue. And I don't know if you had lunch plans or not, but –

EULER: I do now.

[Laughter]

MORRIS: Is that okay? I mean I can't remember what I have at 1:30, but it can't be anything that is more important, I don't believe, than –

STANTON: Do you want to leave that or leave the June 15th in, let us get all the words, and consider it in a couple of weeks. Do the same thing we did, put in on consent agenda –

PRIDEMORE: Let's not get started with what I want. [Laughs] I do have to be at Washington State University at three o'clock for a meeting, but before that –

MORRIS: Let me go take a quick look at my calendar. I'll be right back.

STANTON: I could do it at two o'clock, but I need to be out by two thirty. It's not going to take very long.

[Discussion between several individuals at once.]

MORRIS: I don't have anything on my calendar that can't move for this. So if it gets us down the road – I would prefer that we come back this afternoon because I'm gone next week, if it comes next week.

STANTON: Can you do it, Gordy, in two hours. He's getting ready to go.

MORRIS: I know. He's out the door.

LOWRY: Two other quick matters: first, Gordy discovered that there are some glitches in the code because of the way home businesses are currently treated under the various districts. That will be coming back to you with a code clean-up later.

EULER: The issue is that under Title 40 we made all reviews and approvals Type II's. Straightforward enough, except the way the current code reads all home businesses are review and approval, which means that in effect you'll have a Type I process that you're subjecting to a Type II process.

LOWRY: But the legal advice that staff's going to get is that this ordinance overrides the earlier code.

MORRIS: Yes, because of construction, right? When it is specific.

EULER: That will be a clean-up that will come back to you. We want to make you aware of it so it doesn't look like we've discovered it later. We know about the problem now and we think it's easily fixable.

LOWRY: Secondly, do you want to continue this matter for the specific purpose and sole purpose of coming up with a minor Type II fee to a date certain, so we don't have to restart a process?

STANTON: Well, that's one way to describe it: Minor Type II.

MORRIS: Uh-hmm.

STANTON: Yes, we do.

LOWRY: Okay, then I would recommend that this afternoon when you –

MORRIS: Can you write the motion for us?

LOWRY: Certainly.

MORRIS: Thank you. [Laughs] Okay, then, the board will adjourn until two o'clock this afternoon.

Adjourned

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2 p.m. Bid Openings

Present at the Bid Openings: Louise Richards, Clerk to the Board; Mike Westerman and Allyson Anderson, General Services

BID OPENING 2372

Held a public hearing for Bid Opening 2372 – Center for Community Health. Mike Westerman, General Services, stated that they had addendum number two dated June 9, 2004, that extends the bid from June 15, 2004 to June 22, 2004, at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 107)

BID OPENING 2375

Held a public hearing for Bid Opening 2375 – Rebid-Canyon Creek Generator for CRESA. Mike Westerman, General Services, opened and read a single bid and stated that it was their intention to award Bid 2375 on June 29, 2004, at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 107)

Board Reconvened at 2 o'clock

MORRIS: Just for public information, the board has to do the bid awards, but we don't have to do the bid openings. So for the sake of our morning agendas on Tuesdays, we've moved all the bid openings to the afternoon and Mr. Barron is the one who oversees the bid opening process.

I will at this time call the Board of County Commissioners back to order in the continuation of our morning hearing and I almost feel like saying we are gathered here together today to finish this after all of these years. [Laughs] So, Gordon, if you could just walk us quickly through where we would find the changes that we made today, since we don't have the underlining and shading.

EULER: Thank you. For the record, I'm Gordy Euler, Clark County Long Range Planning. The document you have is actually two documents. We had drafted earlier the adoption ordinance and that's the first part of this, and Exhibit A, which is what we were talking about this morning, is the attachment. So Exhibit A is back on page -- well, it's actually a new page 1, about halfway back. I guess I could have left this as highlight and strikeout, but in my blissfulness and haste, I –

MORRIS: That's alright.

EULER: Okay, again, back to Purpose, is A on page 1, at the top of the page -- remember this was a general with a purpose being 1, and a section that said Nature of Permit that's now moved and I'll show you where that went. Under B, Applicability, I just took out the stuff that was highlighted in yellow and struck through. There's no language changes in Section B.

MORRIS: Excuse me one second. Isn't 3 supposed to fall under Exemptions, in B on line 27, shouldn't 3 actually be -- I know you were pointing it out this morning, Rich, and you were suggesting that it be a separate section, but that sentence doesn't have a verb. Oh, I see. Okay, I read it better. I'm sorry. I wasn't reading it right. Thank you.

EULER: On page 3 of the ordinance, this would be under E-1/A-2, and E-1/B2, we've added the term "onsite' after the word "one parking space," which was the concern that parking be required on the site. On page, under Minor Home Businesses, F-1, A-2, F-1/B-2, same thing – we added the word "onsite" after "parking space." Under G-1, A-2, line 36, same thing – added the word "onsite." At the bottom of page 5, Existing Home Businesses, Section H, as Rich outlined this morning we've created a 1-A, B, and C. The language under 1-A used to be what this morning was under A-2 "the nature of the permit" – that language moved to here; the B was new language that Rich proposed in terms of how you prove up; and C was language that existing there in the section previously, so that each one is now changed to be 1-A, B, and C; again, the bottom of page 5. On page 6, the language at 2-B-4, starting at line 17, and 2-C-4, starting at line 25, this has changed – it says "the business, building, footprints, and activity area remain the size existing on June 15, unless any increase complies with the standards for new home businesses in this section. What that basically means, businesses are frozen at that size unless by these standards they have room to grow. The biggest change is under number 3, lines 33 through 35; basically, it says here that – "home businesses after January 1 that's been in continued operation is required to meet the new standards for home businesses a year from

now." That's consistent with the direction we had this morning. The rest of it goes away because those standards are already included elsewhere in here. Oh, you don't have the last page?

LOWRY: No.

EULER: I hope they do. Do you have a -- the matrix is not there?

MORRIS: We have a matrix.

EULER: Okay. The one thing we did with the matrix was to reinstate footnote 1 so it reads – "parcels in contiguous ownership may not be added together for purposes…" and taking out the shading and the underlining and all that. That's the only change to the matrix. And then I had to rearrange the footnotes because I had struck footnote 1 so I had to just redo the numbering. And the other thing that we did was we checked the effective date, August 15, is a Sunday, two months from today, so we changed the date to September 1, 2004, for the beginning date for receipt of applications. That's a Wednesday.

LOWRY: Page 7 of the adopting ordinance makes the ordinance effective immediately, but delays receipt of any applications for any permits until September.

EULER: That's the way we did it because August 15, two months from today, is a Sunday.

MORRIS: Why didn't you delay until August 16?

LOWRY: Actually, Gordy is a little bit nervous because there is a lot of work that needs to be done in terms of not only getting Tidemark up to speed, but also developing the application packets, doing employee training, so I think the additional time –

EULER: One of the things the Planning Commission urged us to do, and which we haven't figured out whether we will or with your blessing, is some public education – perhaps an open house or two around -- where we explain to people how these are going to work. All that would need to take place in this timeframe.

MORRIS: Okay. I guess the only comment I would make was I thought you were okay with giving a year from the time that the permit opportunity started for the amnesty –

STANTON: We talked in terms of compliance and the compliance would be beginning today -- beginning on the adoption of this. That starts the clock for both existing businesses that were established prior to January 1, 2001 and it starts the clock for those established afterwards, and all new businesses.

MORRIS: So when they come in, though, to bring in…from the time they have contact with staff, they actually only have –

LOWRY: You're talking about the transition businesses?

MORRIS: Right.

LOWRY: The way this is written, there's no permit opportunity for those other than to get a new permit and come into compliance and they have to do that within one year. Under this version, they will not be getting a transition permit.

STANTON: Right. What do you do with new businesses that are just starting up today and they want to start under this? Do you give them a year or do you give them starting September 1…?

EULER: A new business has to come in and meet whatever Type I and Type II standards –

STANTON: Today?

EULER: Yes.

STANTON: And you would be prepared to deal with those?

LOWRY: Under this proposal, no permits would be accepted for processing until –

EULER: Until September 1, for anybody.

LOWRY: Even the new businesses, there is still the need to develop the application forms, the application packet.

MORRIS: So there won't be any new home businesses at all between now and –

STANTON: Or they start their business up and they fall into the businesses started after June – Uh-oh…

MORRIS: No, they can't do that.

STANTON: No, we didn't. That's right.

MORRIS: They can't do that. So they just have to wait?

LOWRY: Or take a risk with Code Enforcement for the period of time before an application could be submitted.

PRIDEMORE: [Inaudible] continue whatever phrase we're using, the suspension of code enforcement activities on these until the date when they can legally apply.

MORRIS: I don't know how many new home business applications you would be likely to see, but I guess if I wanted to start my business, I want to start my business.

EULER: My guess is that there will be some. People have asked me – "I want to start a new business. Should I wait? Or should I come in now?" I have said that I can't tell you that for your particular situation. All I can tell you is that it's likely that the rules for home businesses will change.

STANTON: Well, I guess you could hand them a copy of the new code and say be ready to meet this and we'll accept permits beginning September 1, and we'll have our paperwork available as soon as we can on the website.

EULER: Right.

STANTON: No other way to do it.

MORRIS: What are the timeline requirements for Type II's? What are your code timeline requirements? When do you have to turn around in?

EULER: 78 days.

MORRIS: Okay.

STANTON: And the motion today has to incorporate some discussion about when we will adopt fees? We need to continue this hearing so that we can adopt fees under this same action.

LOWRY: I talked to Mike Butts over the noon hour and he indicated that he could have a recommended fee available within a week. So I think if you continue this for two weeks for purposes solely of adopting a new fee for Type II Minor Home Businesses.

MORRIS: You were going to write out the motion for us.

LOWRY: I just did.

[Laugher]

[Comments from the Clerk of the Board – inaudible]

STANTON: You're gone two Tuesdays in a row.

MORRIS: No. Well…why am I gone on the 29th? I think I am. I think she's right because I think I took vacation that week.

LOWRY: Again, given the fact that permit applications can't be submitted until September 1, moving it out three weeks isn't going to create any kind of a problem.

STANTON: July 6. What did you call that, Rich? What did you finally call that?

LOWRY: Type II Minor Home Business Permits.

MORRIS: Well, did you refer to them in here as Type II Minor permits.

LOWRY: Minor permits that have the road issue get kicked to a Type II; that's what this says.

MORRIS: Okay, but what you're calling as a new fee would be a Minor Type II.

LOWRY: Minor Type II Home Business.

EULER: We have not referred to it in the draft as a Minor Type II. It's still called Type II in conjunction with a private road, is how the language still reads.

STANTON: So is the date three weeks from today July 6? Okay with you?

MORRIS: Uh-hmm. It works.

STANTON: I guess I have to make this motion. Do you want to separate any parts of it out, Commissioner Morris, or can I just make the motion?

MORRIS: No, make it.

STANTON: Okay, we have a number for this ordinance and I would move approval of ordinance number 2004-06-10 and incorporate in the same motion that we continue this hearing until July 6, 2004 at 10 a.m. for the purpose of setting the fees for a Minor Type II Home Business Permit.

MORRIS: Second. It's been moved and seconded to adopt Ordinance 2004-06-10, as stated. All those in favor say aye.

STANTON: Aye.

MORRIS: Aye. All those opposed?

PRIDEMORE: Nay.

MORRIS: You know we didn't do what we normally do about making remarks before a substantive [motion], but do you have any remarks.

STANTON: Just because we were anxious to get through this?

MORRIS: Yes.

STANTON: That's why we didn't make our remarks. Actually, I was commenting to Commissioner Morris earlier, I don't think there's a single soul in the county that's going to be perfectly happy with what it is that we did. I know the task force members have said to us that they had the perfect solution, that they had come to compromise, and that we ought to adopt what it was that they put in front of us. We heard from the Planning Commission that they had the perfect ordinance; that that's what we ought to adopt, that it was a product that we ought to work from. We heard from staff comments about what this could cause within the county. We heard from neighbors. We heard from the Building Industry. We heard from so many people. Nobody is happy, totally, with this. I'm not happy with it totally. I doubt that the other two are as well. But this is a perfect example of taking a very very difficult and contentious issue, a question where society's norms have changed over time and the growth of our county has changed over time, and we've worked through it in a long, arduous process with great guidance from staff and our attorneys and I think what we've come up with is a very good product. I think it's fair. It came down to the point where somebody had to make a decision on this at some point in time and in this case it was three somebody's who had to make the decision. I

think we have done a great job of crafting a code that [TAPE TURNS TO SIDE B]…to both neighbors, as well as those who want to operate a business on their property.

MORRIS: And I guess I would say that the looks on the faces of the people in this room who have followed this from the very beginning are reflecting exactly what Commissioner Stanton has said. There isn't anyone here who has a real happy face. Code Enforcement, let me tell you, does not have a happy face. So there are issues – I heard someone describe it the other day as there are hurdles that you can't knock down, you have to jump them. It felt like this was one we couldn't get through in any other fashion except to just climb up it and come down the other side and hope that we came down with more people, with a greater number of folks' lives and livelihoods improved than might have been the case if we didn't. So there are parts of it in here that I'm not happy about at all. I'm not the least bit happy about the shortened timeline for businesses, the transitional businesses that need to come into compliance. I feel real good about the businesses that are going to be grandfathered. I don't know what's going to happen in the

future as we see new businesses come along. I hope that we don't forget, as we advance with the rest of our comprehensive plan, to talk about where we may accommodate auto repair in rural centers, since we have suggested that we really do need more places to have your automobile repaired than having to drive in to one of our incorporated cities to get it done. I don't want to let that one fall off the table. I'm happy that we found a way to address the price tag for a Type II for some very small businesses that are totally in compliance, but with the exception of the private road resolution and an agreement with their neighbors. So by and large this feels like it started with a bang and is going out pretty much with a fizzle. But it is over and it's behind us and I think everybody knows the rules of the game at this point, and we'll be back here on July the fourth to set the fee level – July 6, of course – to set the fee level for the Minor Type II's and I guess with that we're adjourned. Aren't we?

STANTON: Commissioner Pridemore might have had something to say. Actually, I appreciated very much the deliberation that the three of us –

MORRIS: We are not adjourned. We are not adjourned.

STANTON: – had and Commissioner Pridemore, even if you voted against it, you gave positively to the discussion that helped craft a better ordinance and I really appreciate the discussion that the three of us had after it had already gone through all these other public processes and we had heard from people. I think the three of us had a very healthy, in my recollection, my seven and a half years, the best deliberations that we've had in getting to a decision.

PRIDEMORE: I would like to ask, with Mr. Lowry's permission, that we just rephrase the first whereas on the resolution here. It's just a typo issue. We don't need to do a separate vote. Well, let me, just –

MORRIS: Would you have voted for it had that been right?

[Laughter]

PRIDEMORE: No, it's probably a little more complicated than that.

MORRIS: I can move to reconsider.

PRIDEMORE: I expressed some displeasures with how this has finally come down and voted against it and I still feel that way. I think we have been too permissive with the requirements on this; however, having participated in these discussions for the past three years, I certainly know how complicated this has been. It has always been an issue of how do we balance the interest of neighbors and these businesses and how do we draw the line that. I think if you read some of the press things lately, you'd think I was saying that we should oppose every single new business or existing business, which is clearly not the position I have taken. As I started in the beginning of these deliberations, I have gone from saying let's just enforce the ordinance and shut them all down to let's just let everybody do whatever they want, and everything in between. It's been a difficult process and I respect the two of you and your integrity in trying to put this together in as productive a way as you can. In this case, I'm on the losing end of the vote, but we've got an ordinance and we'll try to make it work as best we can.

MORRIS: I want to apologize publicly. You've been so silence today. Okay, now we're adjourned. By two thirty.

BOARD OF COUNTY COMMISSIONERS

Betty Sue Morris/s/
Betty Sue Morris, Chair

Judie Stanton/s/
Judie Stanton, Commissioner

Craig A. Pridemore, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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